

REMARKS/ARGUMENTS

In this Amendment, Applicants have amended independent claims 1 and 6 to even more-particularly distinguish over Klinker and Bass. As now more-particularly claimed, and as described beginning on page 2, line 1, of Applicants' specification, the method and apparatus for detecting a protocol nonconformity in TCP/IP occurs in a communication between transmitting and receiving terminals in a case where at least one of: a communication apparatus does not perform its operation in accordance with specifications of the TCP/IP; an expected communication process is not performed in the TCP/IP due to false mounting; and an expected communication process does not operate in a new application because of a deficiency or defect in the TCP/IP. Applicants respectfully submit that neither Klinker nor Bass, either alone or in combination, disclose such a method and apparatus.

Applicants respectfully submit that even though the amendments are included in the preamble of the claims, these features must be accorded patentable weight by the Examiner. As discussed in M.P.E.P. ¶ 2111.02, citing *Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, "[C]lear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part, the claimed invention..."

Applicants respectfully submit that Klinker does not have the purpose of Applicants' now more-particularly claimed invention. Para. 0135 of Klinker discloses "[c]ontroller 205 of FIG. 2 is designed to receive performance characteristics, such as latency, loss, jitter, etc., as monitored by the calibrator elements as well as usage characteristics, such as bandwidth, costs, etc., as monitored by the usage collector." Further, para. 0135 of Klinker also discloses "[i]f a particular policy is violated (i.e., one or more performance metrics are outside one or more expected ranges or values), controller 205 determines a subset of one or more alternate data paths that conform to the associated flow policy."

In contrast, according to an aspect of the present invention, the present invention does not describe a method or mechanism of detecting a case where the performance metrics are not satisfied or a case of policy violation, as does Klinker. Rather, the present invention is directed to detection of protocol nonconformity, and most-particularly, in a case where at least one of: a communication apparatus does not perform its operation in accordance with specifications of the TCP/IP; an expected communication process is not performed in the TCP/IP due to false mounting; and an expected communication process does not operate in a new application because of a deficiency or defect in the TCP/IP.

Further, Applicants respectfully submit that Bass discloses at col. 2, lines 52-56, that in the cut-through mode, the LAN switch analyzes the address information contained in a frame header. The cut-through mode is a technique of switching frames. In the cut-through mode, only 6 bites of the target address is read and then forwarded when the target address of the host is recognized. In the cut-through mode, the entire frame is not read.

In contrast, according to an aspect of the present invention, operations of the packet receiving portion 1b and the packet filter/analysis portion 1c are limited to be within the claimed **automatic detecting apparatus** as claimed in claim 6, and are not, thus, related to the operation over the network. In the Office Action, in the Response to Arguments section, the Examiner argued that the features of Applicants' argument with respect to Bass "are not found in the current claims", and thus, Applicants' argument "is therefore not persuasive." However, Applicants respectfully submit that the features where operations of the packet receiving portion 1b and the packet filter/analysis portion 1c are related to the internal operations of the automatic detecting apparatus, and thus are not directed to the network operation, are claimed because the packet receiving portion and the packet filter/analysis portion are claimed in claim 6, which claim is limited to the **automatic detecting apparatus**. Therefore, Applicants respectfully submit that Klinker and Bass do not disclose Applicants' claimed invention for at least this additional reason.

Applicants respectfully submit that amended independent claims 1 and 6 are allowable over Klinker and Bass. As such, Applicants respectfully submit that the application is now in condition for allowance.

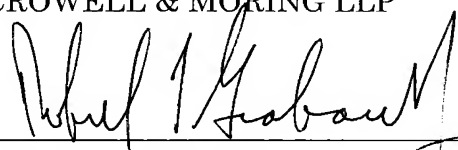
Since the present Office Action is a "Final" Action, Applicants are filing a Request for Continued Examination concurrently with the filing of this Amendment.

If required, this paper should be considered to include a Petition for an Extension of Time sufficient to effect a timely response. Please charge any such fee, any deficiency in fees, or credit any overpayments, to Deposit Account No. 05-1323 (Docket No. 010755.52992US).

Respectfully submitted,

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